Supreme Court, U.S.
FILED

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No. 97 1066 DEC 16 1997

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1997

SUPER YOUNG INDUSTRIES,

Petitioner,

SUPERIOR COURT OF CALIFORNIA FOR
THE CITY AND COUNTY OF SAN FRANCISCO,

Respondent.

PACIFIC EMPLOYERS INSURANCE COMPANY,
Real Parties in Interest

On Petition For Review
To The California Supreme Court

PETITION FOR WRIT OF CERTIORARI

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82 pp

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I. QUESTIONS PRESENTED FOR REVIEW.

A. Is Taiwan a province of the People's Republic of China[1]?

B. May a California court circumvent the President's "One China Policy" by condoning service of process in Taiwan by a method not authorized under PRC law?

[1] Hereinafter "PRC".

II. LIST OF ALL PARTIES.

SUPER YOUNG INDUSTRIES - Petitioner;

The SUPERIOR COURT OF CALIFORNIA FOR THE CITY AND COUNTY OF SAN FRANCISCO - Respondent;

PACIFIC EMPLOYERS INSURANCE COMPANY - Real Party in Interest;

TAIWAN SHIN YEH - co-defendant in the underlying subrogation action.

Petitioner is informed and believes that Pacific Employers Insurance Company is related in some fashion to the CIGNA Group of Insurance Companies.

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(Weil & Brown, California Practice Guide: Civil Procedure Before Trial (The Rutter Group 1997) §4:146, p. 4-32.13.) 4

V. CITATIONS TO OPINIONS BELOW

There have been no official or unofficial reports of any opinion below.

The trial court's order is attached as Appendix A, pp. 8 - 10. The Reporter's Transcript of the trial court proceedings is attached hereto as Appendix B, pp. 11-16.

VI. STATEMENT OF JURISDICTIONAL GROUNDS

On September 17, 1997 the Supreme Court of California denied Super Young Industries' Petition for Review. (Appendix D, pp. 20-21.)

This Court has jurisdiction under 28 U.S.C. §1257 which allows review of judicial determinations of the highest state courts.

Even though the state court proceedings have not been completed the federal issue presented here is "final" under all four categories identified in Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 479-486, 95 S. Ct. 1029, 43 L. Ed. 2d 328 (1975).

VII. RELEVANT CONSTITUTIONAL, STATUTORY, AND RELATED PROVISIONS

The Hague Service Convention of 1965, 20 U.S.T. 361 (Appendix H, pp. 54-71.)

The Taiwan Relations Act, 22 U.S.C. §§3301 et seq. (Appendix G, pp. 43-53.)

VIII. STATEMENT OF THE CASE

Petitioner SUPER YOUNG INDUSTRIES ("Super Young") is a corporation with its principal place of business in Taiwan. Plaintiff PACIFIC EMPLOYERS INSURANCE COMPANY ("Pacific") purportedly served Super Young with an amendment to a subrogation complaint on March 27, 1997.

Such attempted service was improper, in part, because it did not comply with The Hague Service Convention of which the PRC is a signatory. As a result, Super Young specially appeared on a motion to quash said service.

The motion to quash was denied by the California Superior Court in and for the City of San Francisco. The trial court rejected Super Young's argument[2] that since Taiwan was a province of the PRC, the service requirements of the Hague Service Convention should apply[3].

Super Young took a Writ to the California Court of Appeal which was denied without comment (Appendix C, pp. 17-18), and took a subsequent Petition to the California Supreme Court which was also denied without comment (Appendix D, pp. 20-21).

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[2] Super Young made this argument in its memorandum of points and authorities (Appendix E, pp. 28-29), in its reply brief (Appendix F, pp. 39-41), and at oral argument (Appendix B, pp. 14-16).

[3] Reporter's Transcript, Appendix B, pp. 14-16.

IX. ARGUMENT

A. Under Rule 10(c), This Supreme Court Should Decide Whether The United States Recognizes The Island of Taiwan As A Province of the PRC.

> Supreme Court Rule 10(c) recognizes that the Court should consider granting certiorari in two situations: when a state court . . . (1) has decided an important question of federal law which has not been, but should be, settled by the Supreme Court; . . .

(23 Moore's Federal Practice, (Third Ed. Updated 1997) §510.40, p. 510-16.)

Few foreign policy issues could be more "important"[4] then how the island of Taiwan is recognized by the courts of the United States.

To the extent the courts of California may have acted in contravention of U.S. foreign policy, this case raises further "important" constitutional and pre-emption issues. (See In re Murchison, 349 U.S. 133, 136. 75 S. Ct. 623, 99 L. Ed. 942 (1955).)

[4] 28.9% of Taiwan's $81 billion in exports came to the U.S. in 1992. (ABC-CLFO, Inc., Taiwan, Kaleidescope (1997).)

B. **The Federal Courts Are Currently Split On The Status Of Taiwan and Which Law Should Apply.**

One District Court has specifically found that "Taiwan is part of the PRC":

> On December 30, 1978, the United States formally recognized the PRC as the sole government of China, in its entirety, and withdrew recognition from the [ROC]. See President's Memorandum for All Departments and Agencies: Relations With the People of Taiwan, reprinted in 1979 U.S. Code Cong. & Admin. News 36, 75. Over 100 other nations and the United Nations have done the same.
>
> . . .
>
> Accordingly, because the court concludes that Taiwan is part of the PRC, and thus, is a party to the Warsaw Convention, federal subject matter jurisdiction exists over this action.

(Atlantic Mutual v. Northwest Airlines 796 F. Supp. 1188 at 1190-1191 (1992).)

Other courts have criticized the Atlantic Mutual decision:

> The reasoning in Atlantic Mutual was flawed. Its main error lay in the conclusory statement that the United States's recognition of the People's Republic of China means that the United States recognizes its territorial claim to the island of Taiwan. The United States' recognition of mainland China and derecognition of Taiwan has not had the effect in any legal or practical sense of accepting the PRC's territorial claim to Taiwan. (See Wong v. Ilchert, 998 F.2d 661, 663 (9th

> Cir. 1993) (China and the United States' "mutual commitment to respect one another's territorial integrity . . . does not necessarily entail acceptance of one another's territorial claims"); see also Michael E. Mangelson, Taiwan Re-Recognized: A model for Taiwan's Future Global Status, 1992 B.Y.U.L. Rev. 231, 234 ("the TRA [Taiwan Relations Act] and supplemental agreements have, to some extent, reestablished the United States' recognition of Taiwan as a sovereign nation-state"); see also N.Y. Chinese TV Programs v. U.S. Enterprise, 954 F.2d 847 (2d Cir. 1992).
>
> . . .
>
> Taiwan is not a signatory to the Hague Service Convention. As a result, the [Convention] does not apply to service of process on citizens of Taiwan.

(In Re: Schwinn Bicycle Company, 190 Bankr. 599, 611 - 612 (1995).)

The Atlantic Mutual case was appealed to the Seventh Circuit, but the Court was not called upon to review the substance of the decision. The Court did, however, specifically note that:

> Readers of this opinion should not seek to divine our views about the status of Taiwan and the meaning of the Taiwan Relations Act, for we have none. The subject is open to discussion in a case where it matters to the outcome.

(Atlantic Mutual v. Northwest Airlines, 24 F.3d 958 at 962 (1992).)

C. Here, The Status of Taiwan "Matters" to the "Outcome" Of This Case.

If service of process in Taiwan must follow the Hague Convention, then the purported service here undisputedly did not comply.

California Code of Civil Procedure[5] §413.10(c) states that summons "shall be served" on a person outside the United States by one of three relevant means:

> (A) "as prescribed by the law of the place where the person is served or as directed by the foreign authority in response to a letter rogatory."; or
> (B) Any of the four methods by which summons can be served on persons in California; or
> (C) Certified or Registered mail with return-receipt-requested.

(Weil & Brown, California Practice Guide; Civil Procedure Before Trial (The Rutter Group 1997) §4:146, p. 4-32.13.)

However, where the Hague Convention applies, its requirements preempt state law:

> By virtue of the Supremacy Clause, U.S. Const., Art. VI, the [Hague] Convention preempts inconsistent methods of service prescribed by state law in all cases where it applies.

[5] Hereinafter "CCP".

(Volkwagenwerk v. Schlunk 486 U.S 694, 108 S. Ct. 2104, 100 L. Ed. 722 (1988).)

Moreover, CCP §413.10(c) specifically states that its rules are "subject" to the Hague convention.

Here, the Hague Convention would require service through the "Bureau of International Judicial Assistance, Ministry of Justice of the People's Republic of China" in Beijing. The instant service was not made through this agency, and thus was improper in the first instance.

X. CONCLUSION

This Supreme Court is the only proper forum to resolve this important and politically sensitive issue.

DATED: December 13, 1997

Respectfully submitted,

MURPHY, PEARSON, BRADLEY & FEENEY

By:

Alexander J. Berline
Attorneys for Petitioner
SUPER YOUNG INDUSTRIES

APPENDIX:

A. ORDER DENYING MOTION TO QUASH. 8

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C. COURT OF APPEALS, STATE OF CALIFORNIA RULING 17

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E. DEFENDANT SUPER YOUNG'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO QUASH SERVICE OF AMENDMENT TO COMPLAINT; DECLARATION 22

F. SUPER YOUNG'S REPLY BRIEF IN SUPPORT OF MOTION TO QUASH SERVICE OF AMENDMENT TO COMPLAINT; DECLARATION. 35

G. 22 U.S.C. §3301, et seq. CHAPTER 48 - Taiwan Relations. 43

H. The Hauge Service Convention of 1965, 20 U.S.T. 361. 54

A. ORDER DENYING MOTION TO QUASH

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[Endorsed
Filed 7/14/97
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CLERK]

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PACIFIC EMPLOYERS INSURANCE COMPANY

SUPERIOR COURT OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

PACIFIC, et al.	)	CASE NO. 956222
	)	
Plaintiffs	)	ORDER DENYING
	)	MOTION TO QUASH
v.	)	
	)	Date:7/3/97
SUPER YOUNG,	)	Time: 9:30 a.m.
et al.	)	Dept: 10
Defendants.	)	

The motion of Super Young Industries, Inc. to quash service of the summons and complaint came on for hearing as noticed on July 3, 1997. Specially appearing to challenge service on defendant was Alexander J. Berline, Esq., of the law firm of Murphy, Pearson, Bradley & Feeney. Robert C. Chiles, of the law firm of Long & Levit, appeared on behalf of plaintiff Pacific Employers Insurance Company.

The Court, having read the motion papers, declarations, and affidavits submitted by the respective parties, finds that service was properly completed upon Super Young Industries, Inc., and for such reason, the motion to quash is denied.

The Court, on its own review, has determined that the default entered against Super Young Industries, Inc. on the amendment to the amended complaint was prematurely granted, and for such reasons, hereby orders that the default is set aside.

Super Young Industries, Inc. has ten days from the date of this order to answer the complaint.

Dated: Jul 10 1997

s/DAVID A. GARCIA

DAVID GARCIA
Judge of the Superior Court

DEEMED APPROVED AS
TO FORM (CRC391(A))

§1998.701\PL020189.733

B. REPORTER'S TRANSCRIPT OF PROCEEDINGS

IN THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA

IN AND FOR THE CITY AND
COUNTY OF SAN FRANCISCO

BEFORE THE HONORABLE DAVID A. GARCIA, JUDGE

DEPARTMENT NO. 10

--oOo--

PACIFIC, et al.	)	
PLAINTIFF	)	NO. 956222
vs.	)	
SUPER YOUNG, et al.	)	
DEFENDANTS.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, JULY 3, 1997

REPORTED BY: JOSEPH HAYDEN VICKSTEIN,
CSR #4780

APPEARANCES:

For the Plaintiff:

Law Offices of LONG & LEVITT LLP
By: ROBERT C. CHILES, Attorney at Law
101 California Street, Suite 2300
San Francisco, CA 94111

For the Defendants:

Law Offices of MURPHY, PEARSON, BRADLEY & FEENEY
By: ALEXANDER J. BERLINE, Attorney at Law
88 Kearny Street, Suite 1000
San Francisco, CA 94108

THURSDAY, JULY 3, 1997 Morning Session

--oOo--

THE CLERK: Line 3, Pacific Employers Insurance Company versus Super Young Industries.

MR. CHILES: Good morning, Your Honor. Robert Chiles appearing for the Plaintiff, Pacific Employers Insurance Company.

MR. BERLINE: Good morning, Your Honor. Alex Berline specially appearing on behalf of Super Young. Your Honor, if you will recall --

THE COURT: Been fully briefed.

MR. BERLINE: I am here mainly --

THE COURT: I especially like your reply argument.

MR. BERLINE. Which one?

THE COURT: The one about how Taiwan is not a recognized country by the United States, and therefore in order to accomplish service there, we should have gone through the People's Republic.

And I am sure having done that, that the Taiwanese courts would have immediately honored any request by the People's Republic.

MR. BERLINE: Your Honor, I appreciate that U.S. foreign policy in this area makes this an interesting question. And I certainly would not have raised the argument had there not been a District Court opinion which agreed with my analysis.

THE COURT: I think it was slightly distinguishable, but nonetheless I did like the argument.

MR. BERLINE: I take it you liked it but disagreed?

THE COURT: I thought it was highly entertaining. And that was probably the limit of its value to me. That's not meant critically of the fact that you made it. You made it. You do your job. I don't criticize you for doing that.

MR. BERLINE: your Honor, I can speed things up if I could inquire which of the Plaintiff's attempted service

methods you found did the task.

THE COURT: It seems to me the very simple question is pursuant to our statute for service of process, there are three ways we can accomplish process. One, pursuant to the laws of the State of California. Meaning any way that would have been permitted by the State of California. Two, in any way permitted by local authority. And three, pursuant to a letter rogatory, then processed by the local courts, served in compliance with whatever it is the local court directed.

And it seems to me that that's exactly what happened. What happened here, we had a letter rogatory. We had the Summons and complaint delivered to appropriate court official in Taiwan, and they have - - they go about having process served. They have process served in a manner that they thought was appropriate. And that's the beginning and ending of the discussion for this Court.

It's in compliance with our statute. It seemed to satisfy them. It obviously gave you notice of the pendency of the action. Though that's kind of, I suppose, a backhanded argument, and I appreciate that.

But ultimately, Constitutionally, all that is required after all in order to acquire personal jurisdiction is that the method and manner of service of process be accomplished in a way that is reasonably calculated under all the circumstances to apprise the party of the pendency of the action, and to afford them an opportunity to respond.

And it seems that that has been accomplished here. So we have Constitutional service of process. We also have statutory service of process.

MR. BERLINE: And Your Honor, our only contention to that is I have spoken with local counsel, Jenny Chen, who advised me in her declaration that she felt that the service was not in compliance with Taiwanese law. And our only concern here - -

THE COURT: And I don't disagree with that. And, in fact, if Ms. Chen were here testifying as an expert and explaining to me what the service of process statutes required, or laws required in Taiwan, I might agree totally.

Unfortunately, that's only one of the methods for Super Young that is service of process. And again we had this service, this Summons and Complaint served by court per letter rogatory. That is a third alternative.

MR. BERLINE: Your Honor, I will not belabor the point. I do believe counsel's also here on the matter of the default being set aside.

THE COURT: The default obviously, it seems to this court to have been improvidently entered. It was filed after you filed your Motion to Quash. I am vacating that on my own motion and I don't believe counsel has any objection to that whatsoever. Okay?

MR. CHILES: Thank you.

(Whereupon, the proceedings were adjourned.)

--oOo--

REPORTER'S CERTIFICATE

I, Joseph Hayden Vickstein, an official reporter of the Superior Court of the State of California, in and for the City and County of San Francisco, do hereby certify:

That the foregoing transcript, as reduced to transcript by computer under my direction and control to the best of my ability, is a full, true and correct computer transcription of the shorthand notes taken as such reporter of the proceedings in the above-entitled matter.

s/Joseph Hayden Vickstein

Joseph Hayden Vickstein, CSR #4780

C. COURT OF APPEALS, STATE OF CALIFORNIA RULING

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
FOR THE
FIRST APPELLATE DISTRICT
DIVISION THREE

FILED
COURT OF APPEAL
FIRST APP. DIST.
AUG 01 1997
RON D. BARROW, CLERK
BY_____
DEPUTY

SUPER YOUNG, et al.

Petitioner,

vs.

THE SUPERIOR COURT, et al.

Respondent;

A079163

Super. Ct. No. 956222

PACIFIC EMPLOYERS, et al.

Real Party in Interest.

_____/

BY THE COURT:

The petition for writ of mandate and/or prohibition is denied.

(Phelan, P.J., Corrigan, J. & Parrilli, J. participating.)

Dated AUG 01 1997

s/Phelan, P.J.

D. CALIFORNIA SUPREME COURT RULING

First Appellate Distrtict, Division Three, No. A079163
S063506
IN THE SUPREME COURT OF CALIFORNIA

SUPER YOUNG INDUSTRIES, Petitioner

Supreme

Court

v..

Filed

Sept 17 1997

SAN FRANCISCO COUNTY SUPERIOR COURT,
Respondent
RobertWandruff

Clerk, Deputy

PACIFIC EMPLOYERS INSURANCE COMPANY, Real
Party In Interest

Petition for review DENIED.

s/
Acting Chief Justice

E. DEFENDANT SUPER YOUNG'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO QUASH SERVICE OF AMENDMENT TO COMPLAINT; DECLARATION

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Attorneys **Specially Appearing** Only to Challenge Service for Defendant SUPER YOUNG INDUSTRIES, INC.

IN THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

PACIFIC, et al.	Case No. 956222
Plaintiffs,	SUPER YOUNG'S MEMORANDUM OF POINTS AND AUTHORITIES
v.	IN SUPPORT OF MOTION TO QUASH SERVICE OF
SUPER YOUNG, et al.	AMENDMENT TO COMPLAINT; AND DEC-LARATIONS IN SUPPORT
Defendants.	THEREOF.
	DATE: July 3, 1997
	TIME: 9:00 am

DEPT: 10
JUDGE: Hon. David Garcia

I.
INTRODUCTION

Defendant SUPER YOUNG INDUSTRIES, INC. (hereinafter "Super Young"), is a corporation with its principal place of business in Taiwan. Plaintiff allegedly served its amended complaint on Super Young on March 27, 1997 in Taiwan as detailed in the attached declaration of Ann Strayer (Ex. 1, B).

Such attempted service is improper and ineffective under California, PRC and Taiwanese law, and therefore, Super Young specially appears on this motion to quash challenging said service.

II.
STATEMENT OF LAW

A. Plaintiff's Amended Complaint Needs to Be Personally Served As If It Was An Original Proceeding.

Due process requires that an amendment making substantive changes, that may effect such defendant's decision not to contest the action, should be brought to its attention the same way as the original complaint (i.e., personal service, rather than service by mail). (Engebretson & Co., Inc. v harrison (1981) 125 Cal.App.3d 436, 442-443.)

Where a defendant is already in default, an amendment increasing the damages sought has been held to be a "substantive" change "opening up" the default, and giving defendant the right to respond to the amended pleading. (Leo v. Dunlap (1986) 260 Cal.App.2d 24, 27.)

Defendants who defaulted to the original complaint must be served with an amended complaint containing the substantive changes. In effect, plaintiff waives the right to enforce an immediate judgment against defendants who have defaulted to the original complaint. Their defaults are "open", and they are therefore entitled to demurrer, move to strike or answer the amended complaint - although they made no response to the original. (Ford v. Sup. Court (1973) 34 Cal.App.3d 338, 339.)

III.
ARGUMENT

A. Since Super Young Is No Longer A Party, Plaintiff's Must Personally Serve This

"Substantive" Amendment On Super Young In Taiwan.

Due process requires that an amendment making substantive changes, as may effect such defendant's decision not to contest the action, should be brought to its attention the same way as the original complaint (i.e., personal service, rather than service by mail). (Engebretson & Co., Inc. v. harrison (1981) 125 Cal.App.3d 436, 442-443.)

Here, we have a similar situation because while Super Young did generally appear in the first action, its answer has been struck and it is no longer a party. In Engebretson, supra, the court adopted the Federal rule that amended pleadings must be served on a party in default via the same means for service of summons. (Id. at p. 442.).

Plaintiff may contend that Super Young's first general appearance (see Stip. Ex. 3) should somehow carry over to this action. This contention lacks merit, because while the case number remains the same, the law deems a substantive amendment to the complaint as a new action.

By way of example, imagine if plaintiff sued Super Young for a car crash in one action and Super Young appeared and answered. If plaintiff then brought a second unrelated suit for breach of contract it could not simply serve the attorneys in the car crash action. Rather, plaintiff would have to personally serve Super Young with summons and the amendment to the complaint.

Here, we have the same situation. Plaintiff's substantive change is effectively a new action which must be personally served.

B. The Instant Service Fails As It Did Not Comply With California Law, PRC Law or With Taiwanese Law.

CCP §413.10(c) states that summons "shall be served" on a person outside the United States by either two relevant means:

(1) Any of the four methods by which summons can be served on persons in California; or

(2) "as prescribed by the law of the place where the person is served or as directed by the foreign authority in response to a letter rogatory."

Here, the instant proof of service as filed by Plaintiff did not comply with either.

1. The Instant Service Fails Under California Law.

The instant "Certificate of Service" states in pertinent part that:

The person to be served on:

Super Young Industries, Inc.
1-1, Hsis Pei, Chiu Pei Village, Tai Pao Hsiang
Chia Yi Hsien, Taiwan

. . .

2. The person concerned being unavailable, the document(s) has/have been delivered to a house-mate or employee (x)

(See Ex. 1, B.)

This fails as attempted personal service because CCP §417.10(a) requires that the time and place of delivery must be indicated. Further, if the defendant is a corporation, the name and capacity of the person served on its behalf must be indicated. Here, all of this requisite information is missing, and thus this personal service fails.

This also fails as Substitute Service because there is no declaration of a follow-up mailing of the materials as mandated by CCP §415.20.

There is no evidence or declaration indicating that the other two methods of California Service were attempted or completed, so they will not be addressed.

In addition, there is no indication who purportedly served the summons, how old they were, any declaration etc. Therefore, regardless of the type of service, the "Certificate of Service" is fatally defective under California law.

Therefore, this Certificate fails in several regards under California law.

2. This Service Fails Under the Hague Convention and the Law of the PRC.

Plaintiff has purportedly served Super Young under Taiwanese law. However, the United States does not recognize Taiwan and certain courts have found that the rules of the treaties adopted by the People's Republic of China ("PRC", mainland China) must be followed to be consistent with U.S. foreign policy.

The PRC is a signatory to the Hague Convention, and some courts have found that Taiwan (the Republic of China, "ROC"), due to its unique diplomatic status, should be treated as if it were part of the PRC:

> On December 30, 1978, the United States formally recognized the PRC as the sole government of China, in its entirety, and withdrew recognition from the [ROC]. See President's Memorandum for All Departments and Agencies: Relations With the People of Taiwan, reprinted in 1979 U S. Code Cong. & Admin. News 36, 75. Over 100 other nations and the United Nations have done the same.
>
> . . .
>
> Accordingly, because the court concludes that Taiwan is part of the PRC, and thus, is a party to the Warsaw Convention, federal subject matter jurisdiction exists

over this action.

(Atlantic Mutual v. Northwest Airlines (1992) 796 F. Supp. 1188 at 1190, 1191, attached hereto as Ex. 4.)

Here, Plaintiff neither contends nor has it actually effectuated service of Super Young under the Hague Convention and the rules relative to the PRC. Therefore, the instant service is invalid.

3. The Instant Service Also Fails Under Taiwanese Law.

Assuming arguendo, that this Court finds that the law of Taiwan should apply as opposed to the law of the PRC, the service still fails.

This purported proof of service on Super Young is not valid because it fails to comply with Taiwanese law in several respects (a true and correct copy of Taiwanese Law Governing Assistance to Foreign Courts ("LGEAFC") is attached hereto as Ex. 2.):

a. Pursuant to LGEAFC Article 1, only a Taiwanese "Court" is authorized to "render assistance" to "foreign courts". Here, Mark Mayfield specifically states that local "assistance" was provided by TERCO (Taipei Economic and Cultural Representative Office). Since TERCO is not a Taiwanese "Court", this assistance was un-authorized and thus the purported service was improper.

b. Pursuant to LGEAFC Article 2, any "assistance" shall not violate the statutes and ordinances of the [ROC]." Under ROC law service on a business is only proper if the authorized legal representative of that business is named and personally served. Here the service was purportedly made on an "employee" of SYII, but there is no evidence that this person was the authorized legal representative of SYII.

Moreover, Article 5 requires that the name, nationality, and domicile of the person to be served (here, the legal representative of SYII) must be set forth by the foreign court. Here, this was not done.

Under ROC law a "Certificate of Service" must indicate who allegedly made the service. Here, there is no name given on the Certificate to SYII (See Ex. 1, B).

c. Pursuant to LGEAFC Article 3, the "substance of each case . . . shall be stated in writing and transmitted through diplomatic channels". Here, Mark Mayfield declares, in ¶2, that admits that there are no "diplomatic relations" between the US and the ROC, therefore the subject transmission violates Article 3.

d. Article 7 requires that any documents served must be accompanied by a "Chinese Translation". Here, the subject documents are in a Chinese dialect spoken by mainland Chinese not the dialect which is the official language in Taiwan. Thus, the instant service is in violation of Article 7.

e. Article 8 requires that the "Fees in a civil case shall be those of the [ROC]". Here, the fees SYII must pay to file this motion, for example, are not the same for a similar motion in Taiwanese Court. Therefore, the instant service violates Article 8.

The legal contentions made above in subparagraphs a. - e. are authenticated by the attached declaration of J. Chen, a licensed attorney in Taiwan.

There are other problems with this service under Taiwanese law, but time and space limit us to the above.

IV. CONCLUSION.

In light of the above, the instant service must be quashed. International principals of comity demand that the rules of service on a foreign entity be strictly complied with.

DATED: December 13, 1997

MURPHY, PEARSON,
BRADLEY & FEENEY

By:_____
Alexander J. Berline
Attorneys Specially
Appearing for Defendants
SUPER YOUNG
INDUSTRIES, INC.

DECLARATION OF ALEXANDER J. BERLINE

I, Alexander J. Berline. declare as follows:

1. I am an attorney at law licensed to practice before this Court. Our firm was retained by Super Young's insurer Agora Insurance to represent Super Young months after plaintiff purportedly obtained the first default. By agreement to set aside that first default Super Young agreed to make a general appearance and file an answer to the original "complaint" only. A true and correct copy of this agreement is attached hereto as Ex. 3.

2. During the course of litigation, plaintiffs brought a motion to strike before even filing a motion to compel the further deposition in Taiwan of a purported employee of Super Young, Mrs. Betty Ruey. Said motion was inexplicably granted even though Taiwanese law forbids depositions and the ordering of such a deposition constitutes an affront to the sovereignty of Taiwan.

3. After Super Young's answer was struck and our §473 and §1008 motion was denied, our firm was no longer counsel of record for Super Young in part because the litigation was over - Super Young was simply no longer a party. Our firm did agree to monitor the case on behalf of both Agora and Super Young, but our representation was over. As a professional curtesy, counsel for plaintiff has kept our office apprised of the status of the litigation.

4. Attached hereto as Ex. 1 is a true and correct copy of the Declaration of Ann Strayer which was filed on June 2, 1997.

5. Attached hereto as Ex. 2 is a true and correct

copy of the LGEAFC as described above.

6. Attached hereto as Ex. 4 is a true and correct copy of the Atlantic case as described above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

June 6, 1997

Alexander J. Berline

AJB.124908
6144.1

F. SUPER YOUNG'S REPLY BRIEF IN SUPPORT OF MOTION TO QUASH SERVICE OF AMENDMENT TO COMPLAINT; DECLARATION

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Attorneys **Specially Appearing** Only to Challenge Service for Defendant SUPER YOUNG INDUSTRIES, INC.

IN THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

PACIFIC, et al.	Case No. 956222
Plaintiffs,	SUPER YOUNG'S REPLY BRIEF IN SUPPORT OF MOTION TO QUASH SERVICE OF AMENDMENT TO COMPLAINT; AND DECLARATIONS IN SUPPORT THEREOF.
v.	
SUPER YOUNG, et al.	
Defendants. /	

DATE: July 3, 1997
TIME: 9:00 am
DEPT: 10
JUDGE: Hon. David Garcia

I.
INTRODUCTION

The only relevant issue is whether Super Young has been properly served with plaintiff's Amended Complaint, and thus we only address this issue here in Reply. Needless to say, Super Young wholeheartedly disagrees with the characterizations by Plaintiff's counsel.

Plaintiff contends that they have served Super Young via three methods: (1) service on counsel, (2) service by mail, and (3) personal service in Taiwan. We here demonstrate that each attempt was defective.

II.
ARGUMENT

A. Service On Prior Counsel's Office Does Not Constitute Proper Service.

Plaintiff's service by mail on Super Young's prior counsel does not constitute proper service because Super Young was not a party to the action at the time of service.

CCP § 284 provides the procedure to change an "attorney in an action". Here, after its answer was struck, Super Young was no longer in the "action". Consequently, Super Young, who was and is no longer a party by law had no "attorney in an action." Stated another way, Super Young had no attorney "of record" because there was no "record."

There being no "action," Super Young had no authority to file a substitution of attorneys nor any need to do so.

Super Young's counsel has consistently asserted this point by filing an earlier Nov. 21, 1996 Motion to Quash after the Amendment was sent by mail. This motion was dropped after Plaintiff's counsel clarified that said mailing was "for courtesy purposes" only. (See Ex. 5.)

A contrary rule would require every attorney to file a needless motion to withdraw after every dismissal, judgment, appeal etc.

What would happen if the law firm had dissolved in the interim, the retained partner died or retired etc.? Consider further the problems if the attorney were still around, but the defendant had disappeared!

The law requires personal service of an amended complaint after default to resolve the above issues and so the defendant can weigh his options, including whether to even retain counsel in the first instance.

B. Purported Service By Mail Is Premature Because Plaintiff Can Not Produce the Required "Return Receipt".

While Super Young disputes whether service by mail under California law constitutes proper service, we need not reach this issue because Plaintiff has not filed the requisite "return receipt".

CCP § 417.20(a) states that, " . . . if service by mail pursuant to §415.40, proof of service shall include evidence . . . by a signed return receipt . ." (emphasis added).

Here, plaintiff has the evidentiary burden of proof and have proffered no such evidence. (Stamps v. Superior Court (1971) C.A.3d 108.)

C. **The Alleged Personal Service Was Defective.**

Super Young is not responsible for the fact that the United States refuses to recognize the democratic government of the ROC. (See p. 5 Memo P&A.) Any hardship this stance causes plaintiff is a matter which should be brought up with the United States Executive Branch.

The fact remains that Article 3 of ROC's Assistance to Foreign Courts (Ex. 2) mandates the existence of "diplomatic channels" and Article 4 mandates that such Assistance be reciprocal. Here, by Executive Order, the United States refuses to recognize the government of Taiwan, has effectively severed diplomatic channels, and has effectively refused reciprocity.

Moreover, the PRC, who the United States does recognize, mandates service via the Hague convention, which was clearly not complied with here.

This argument is not "patently ridiculous", but rather has been accepted and applied by at least one Court: Atlantic Mutual (Ex. 4.)

Assuming arguendo that the law of Taiwan applies, plaintiff's counsel has not countered our arguments 3.(b), (c), (d), or (e) (Memo P&A, p. 6 and 7). Since plaintiff bears the burden of proving proper service, absent contrary evidence (i.e. a contrary competent declaration) this Court can not find this service proper.

Plaintiff complains that ". . . no responsible representative from Super Young has verified any of its assertions . . .". However, it is plaintiff not Super Young who bears the burden of proof, thus any such "verification" is unnecessary. Second of all, it would be pointless, if not impossible, for Super Young to prove that something has not occurred.

Finally, "awareness" of a lawsuit is not the same as "service". (Tsakos Shipping & Trading, S A. v. Juniper Garden Town Homes, Ltd. (1993) 12 Cal.App.4th 74, 85.) Thus, a lay-person's assertions, assuming arguendo they exist, are simply not relevant to the legal issue of "service".

III. CONCLUSION.

The dispute between Mr. Shieh and plaintiff's counsel is of no relevance here.

It was plaintiff who should have thought twice before moving to strike Super Young's answer, and thus its appearance. Having done so, it can not complain that said re-service is difficult or challenging.

As detailed above, Plaintiff's attempted service either fails as a matter of law or as a matter or proof. Thus, this motion to quash must be granted.

DATED: December 13, 1997

MURPHY, PEARSON,
BRADLEY & FEENEY

BY_____
Alexander J. Berline
Attorneys Specially Appearing for
Defendants SUPER YOUNG
INDUSTRIES, INC.

DECLARATION OF ALEXANDER J. BERLINE

I, Alexander J. Berline, declare as follows:

1. I am an attorney at law licensed to practice

before this Court. I could and would competently testify to the following:

2. Attached hereto as Ex. 5 is a true and correct copy of Mr. Chiles' Nov. 7, 1996 letter.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

July 1, 1997

_____

Alexander J. Berline

AJB.126537
6144.1

G. 22 U.S.C. §3301, et seq.
CHAPTER 48 - Taiwan Relations

22 U.S.C. §3301, et seq.
CHAPTER 48 - Taiwan Relations

§3301. Congressional findings and declaration of policy

(a) Findings

The President having terminated governmental relations between the United States and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, the Congress finds that the enactment of this chapter is necessary --

(1) to help maintain peace, security and stability in the Western Pacific; and

(2) to promote the foreign policy of the United States by authorizing the continuation of commercial, cultural, and other relations between the people of the United States and the people on Taiwan.

(b) Policy

It is the policy of the United States --

(1) to preserve and promote extensive, close, and friendly commercial, cultural, and other relations between the people of the United States and the people on Taiwan, as well as the people on the China mainland and all other peoples of the Western Pacific area;

(2) to declare that peace and stability in the area are in the political, security, and economic interests of the United

States and are matters of international concern;

(3) to make clear that the United States decision to establish diplomatic relations with the People's Republic of China rests upon the expectation that the future of Taiwan will be determined by peaceful means;

(4) to consider any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, a treat to the peace and security of the Western Pacific area and of grave concern to the United States;

(5) to provide Taiwan with arms of a defensive character; and

(6) to maintain the capacity of the United States to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan.

(c) Human rights

Nothing contained in this chapter shall contravene the interest of the United States in human rights, especially with respect to the human rights of all the approximately eighteen million inhabitants of Taiwan. The preservation and enhancement of the human rights of all the people on Taiwan are hereby reaffirmed as objectives of the United States

§3302. Implementation of United States policy with regard to Taiwan

(a) Defense articles and services

In furtherance of the policy set forth in §3301 of this title, the United States will make available to Taiwan such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability.

(b) The President and the Congress shall determine the nature and quantity of such defense articles and services based solely upon their judgment of the needs of Taiwan, in accordance with procedures established by law. such determination of Taiwan's defense needs shall include review by United States military authorities in connection with recommendations to the President and the Congress.

(c) United States response to threats to Taiwan or dangers to United States interests

The President is directed to inform the Congress promptly of any threat to the security or the social or economic system of the people on Taiwan and any danger to the interests of the United States arising therefrom. The President and the Congress shall determine, in accordance with the constitutional processes, appropriate action by the United States in response to any such danger.

§ 3303. Application to Taiwan of laws and international agreements.

(a) Application of United States laws generally

The absence of diplomatic relations or recognition shall not affect the application of the laws of the United

States with respect to Taiwan, and the laws of the United States shall apply with respect to Taiwan in the manner that the laws of the United State applied with respect to Taiwan prior to January 1, 1979.

(b) Application of United States laws in specific and enumerated areas

The application of subsection (a) of this section shall include, but shall not be limited to, the following:

(1) Whenever the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.

(2) Whenever authorized by or pursuant to the laws of the United States to conduct or carry out programs, transactions, or other relations with respect to foreign countries, nations, states, governments, or similar entities, the President or any agency of the United States Government is authorized to conduct and carry out, in accordance with §3305 of this title, such programs, transactions, and other relations with respect to Taiwan (including, but not limited to, the performance of services for the United States through contracts with commercial entities on Taiwan), in accordance with the applicable laws of the United States.

(3)(A) The absence of diplomatic relations and recognition with respect to Taiwan shall not abrogate, infringe, modify, deny, or otherwise

affect in any way any rights or obligations (including but not limited to those involving contracts, debts, or property interests of any kind) under the laws of the United States heretofore or hereafter acquired by or with respect to Taiwan.

(B) For all purposes under the laws of the United States, including actions in any court in the United States, recognition of the People's Republic of China shall not affect in any way the ownership of or other rights or interests in properties, tangible and intangible, and other things of value, owned or held on or prior to December 31, 1978 or thereafter acquired or earned by the governing authorities on Taiwan.

(4) Whenever the application of the laws of the United States depends upon the law that is or was applicable on Taiwan or compliance therewith, the law applied by the people on Taiwan shall be considered the applicable law for that purpose.

(5) Nothing in this chapter, nor the facts of the President's action in extending diplomatic recognition to the People's Republic of China, the absence of diplomatic relations between the people on Taiwan and the United States, or the lack of recognition by the United States, and attendant circumstances thereto, shall be construed in any administrative or judicial proceeding as a basis for any United States Government agency,

commission, or department to make a finding of fact or determination of law, under the Atomic Energy Act of 1954 [42 U.S.C.A. § 2011 et seq.] and the Nuclear Non-Proliferation Act of 1978 [22 U.S.C.A. §3201 et seq.], to deny an export license application or to revoke an existing export license for nuclear exports to Taiwan.

(6) For purposes of the Immigration and Nationality Act [8 U.S.C.A. §1152(b)].

(7) The capacity of Taiwan to sue and be sued in courts in the United States, in accordance with the laws of the United States, shall not be abrogated, infringed, modified, denied, or otherwise affected in any way by the absence of diplomatic relations or recognition.

(8) No requirement, whether expressed or implied, under the laws of the United States with respect to maintenance of diplomatic relations or recognition shall be applicable with respect to Taiwan.

(c) Treaties and other international agreements

For all purposes, including actions in any court in the United States, the Congress approves the continuation in force of all treaties and other international agreements, including multilateral conventions, entered into by the United States and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, and in force between them on December 31, 1978, unless and until terminated in accordance with law.

(d) Membership in international financial institutions and other international organizations

Nothing in this chapter may be construed as a basis for supporting the exclusion or expulsion of Taiwan from continued membership in any international financial institution or any other international organization.

(Pub. L. 96-8, §4, Apr. 10, 1979, 93 Stat. 15.)

§3304. Overseas Private Investment Corporation

(a) Removal of per capita income restrictions on Corporation activities with respect to investment projects on Taiwan

During the three-year period beginning on April 10, 1979, the $1,000 per capita income restriction in clause (2) of the second undesignated paragraph of §2191 of this title shall not restrict the activities of the Overseas Private Investment Corporation in determining whether to provide any insurance, reinsurance, loans or guaranties with respect to investment projects on Taiwan.

(b) Application by Corporation of other criteria

Except as provided in subsection (a) of this section, in issuing insurance, reinsurance, loans, or guaranties with respect to investment projects on Taiwan, the Overseas Private Insurance[1] Corporation shall apply the same criteria as those applicable in other parts of the world.

(Pub. L. 96-8, §5, Apr. 10, 1979, 93 Stat.16.)

[1] So in original. Probably should be "Investment".

§3305. The American Institute in Taiwan

(a) Conduct of programs, transactions, or other relations with respect to Taiwan

Programs, transactions, and other relations conducted or carried out by the President or any agency of the United States Government with respect to Taiwan shall, in the manner and to the extent directed by the President, be conducted and carried out by or through –

(1) The American Institute in Taiwan, a nonprofit corporation incorporated under the laws of the District of Columbia, or

(2) such comparable successor nongovernmental entity as the President may designate,

(hereafter in this chapter referred to as the "Institute").

(b) Agreement or transaction relative to Taiwan entered into, performed, and enforced

Whenever the President or any agency of the United States government is authorized or required by or pursuant to the laws of the United States to enter into, perform, enforce, or have in force an agreement or transaction relative to Taiwan, such agreement or transaction shall be entered into, performed, and enforced, in the manner and to the extent directed by the President, by or through the Institute.

(c) Preemption of laws, rules, regulations, or ordinances of District of Columbia, States, or political subdivisions of States

To the extent that any law, rule, regulation, or ordinance of the District of Columbia, or of any State or political subdivision thereof in which the Institute is incorporated or doing business, impedes or otherwise interferes with the performance of the functions of the Institute is incorporated or doing business, impedes or otherwise interferes with the performance of the functions of the institute pursuant to this chapter, such law, rule, regulation, or ordinance shall be deemed to be preempted by this chapter.

(Pub. L. 96-8, §6, Apr. 10. 1979, 93 Stat. 17.)

[1]So in original. Probably should be "the".

§3306. Services to United States citizens on Taiwan

(a) Authorized services

The Institute may authorize any of its employees on Taiwan –

(1) to administer to or take from any person an oath, affirmation, affidavit, or deposition, and to perform any notarial act which any notary public is required or authorized by law to perform within the United States,

(2) To[1] act as provisional conservator of the personal estates of deceased United States citizens; and

(3) to assist and protect the interests of United States persons by performing other acts such as are authorized to be performed outside the United States for consular purposes by such laws of the United States as the President may specify.

(b) Acts by authorized employees

Acts performed by authorized employees of the Institute under this section shall be valid, and of like force and effect within the United States, as if performed by any other person authorized under the laws of the United States to perform such acts.

(Pb. L., 96-8, §7, Apr. 10, 1979, 93 Stat. 17.)

[1]So in original. Probably should be "to".

H. The Hauge Service Convention of 1965 20 U.S.T. 361

The Hauge Service Convention of 1965
20 U.S.T. 361

Note: This Revision includes information as of 8/1/96.

CONVENTION OF THE SERVICE ABROAD OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS.

The States signatory to the present Convention.

Desiring to create appropriate means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time.

Desiring to improve the organization of mutual judicial assistance for that purpose by simplying and expediting the procedure.

Having resolved to conclude a Convention to this effect and have agreed upon the following provisions:

Article 1

The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document of service aboard.

This Convention shall not apply where the address of the person to be served with the document is not known.

CHAPTER 1 – JUDICIAL DOCUMENTS

Article 2

Each contracting State shall designate a Central Authority which will undertake to receive requests of service coming from other contracting States and to proceed in conformity with the provisions of articles 3 to 6.

Each state shall organize the Central Authority in conformity with its own law.

Article 3

The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legislation or other equivalent formality.

The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.

Article 4

If the Central Authority considers that the request does not comply with the provisions of the present Convention it shall promptly inform the applicant and specify its objections to the request

Article 5

The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either -

(a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or

(b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.

Subject to sub-paragraph (b) of the first paragraph of this article, the document may always be served by delivery to an addressee who accepts it voluntarily.

If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed.

That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.

Article 6

The Central Authority of the State addressed or any authority which it may have designated for that purpose, shall complete a certificate in the form of the model annexed to the present Convention.

The certificate shall state that the document has been served and shall include the method, the place and the date of service and the person to whom the document was delivered. If the document has not been served, the certificate shall set out the reasons which have prevented service.

The applicant may require that a certificate not completed by a Central Authority or by a judicial authority shall be countersigned by one of these authorities.

The certificate shall be forwarded directly to the applicant.

Article 7

The standard terms in the model annexed to the

present Convention shall in all cases be written either in French or in English. They may also be written in the official language, or in one of the official languages, of the State in which the documents originate.

The corresponding blanks shall be completed either in the language of the State addressed or in French or in English.

Article 8

Each contracting State shall be free to effect service of judicial documents upon persons abroad, without application of any compulsion, directly through its diplomatic or consular agents.

Any State may declare that it is opposed to such service within its territory, unless the document is to be served upon a national of the State in which the documents originate.

Article 9

Each contracting State shall be free, in addition, to use consular channels to forward documents, for the purpose of service, to those authorities of another contracting State which are designated by the latter for this purpose.

Each contracting State may, if exceptional circumstances so require, use diplomatic channels for the same purpose.

Article 10

Provided the State of destination does not object, the present Convention shall not interfere with –

(a) the freedom to send judicial documents, by

postal channels, directly to persons abroad.

(b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,

(c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officer, officials or other competent persons of the State of destination.

Article 11

The present Convention shall not prevent two or more contracting States from agreeing to permit, for the purpose of service of judicial documents, channels of transmission other than those provided for in the preceding articles and, in particular, direct communication between their respective authorities.

Article 12

The serviced of judicial documents coming from a contracting State shall not give rise to any payment or reimbursement of taxes or costs for the services rendered by the State addressed.

the applicant shall pay or reimburse the costs occasioned by -

(a) the employment of a judicial officer or of a person competent under the law of the State of destination,

(b) the use of a particular method of service.

Article 13

Where a request for service complies with the terms of the present Convention, the State addressed may refuse to comply therewith only if it deems that compliance would infringe its sovereignty or security.

It may not refuse to comply solely on the ground that, under its internal law, it claims exclusive jurisdiction over the subject matter of the action or that its internal law would not permit the action upon which the application is based.

The Central Authority shall, in case of refusal, promptly inform the applicant and state the reasons for the refusal.

Article 14

Difficulties which may arise in connection with the transmission of judicial documents for service shall be settled through diplomatic channels.

Article 15

Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that –

(a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or

(b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Each contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled –

(a) the document was transmitted by one of the methods provided for in this Convention,

(b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,

(c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through he competent authorities of the State addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

Article 16

When a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the following conditions are fulfilled –

(a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and

(b) the defendant has disclosed a prima facie defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each contracting State may declare that the application will not be entertained if it is filed after the expiration of a time to be stated in the declaration, but which shall in no case be less than one year following the date of the judgment.

This article shall not apply to judgments concerning status or capacity of persons.

Article 17

Extrajudicial documents emanating from authorities and judicial officers of a contracting State may be transmitted for the purpose of service in another contracting State by the methods and under the provisions of the present Convention.

CHAPTER III -- GENERAL CLAUSES

Article 18

Each contracting State may designate other authorities in addition to the Central Authority and shall determine the extent of their competence.

The applicant shall, however, in all cases, have the right to address a request directly to the Central Authority.

Federal States shall be free to designate more than one Central Authority.

Article 19

To the extent that the internal law of the contracting State permits methods of transmission, other than those provided for in the preceding articles, of documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions.

Article 20

The present Convention shall not prevent an agreement between any two or more contracting States to dispense with --

(a) the necessity for duplicate copies of transmitted documents as required by the second paragraph of article 3,

(b) the language requirements of the third paragraph of article 5 and article 7,

(c) the provisions of the fourth paragraph of article 5,

(d) the provisions of the second paragraph of article 12.

Article 21

Each contracting State shall, at the time of the deposit of its instrument of ratification or accession, or at a later date, inform the Ministry of Foreign Affairs of the Netherlands of the following --

(a) the designation of authorities, pursuant to articles 2 and 18,

(b) the designation of the authority competent to complete the certificate pursuant to article 6,

(c) the designation of the authority competent to receive documents transmitted by consular channels, pursuant to article 9.

Each contracting State shall similarly inform the Ministry, where appropriate of--

(a) opposition to the use of methods of transmission pursuant to articles 8 and 10,

(b) declarations pursuant to the second paragraph of article 15 and the third paragraph of article 16.

(c) all modifications of the above designations, oppositions and declarations.

Article 22

Where Parties to the present Convention are also Parties to one or both of the Conventions on civil procedure signed at the Hague on 17th July 1905.[1] and on 1st March 1954,[2] this Convention shall replace as between them articles 1 to 7 of the earlier Conventions.

[1] 99 BFSP 990

[2] 286 UNTS 265

Article 23

The present Convention shall not affect the application of article 23 of the Convention on civil procedure signed at The Hague on 17th July 1905, or of article 24 of the Convention on civil procedure signed at The Hague on 1st March 1954.

These articles shall, however, apply only if methods of communication, identical to those provided for in these Conventions, are used.

Article 24

Supplementary agreements between parties to the Conventions of 1905 and 1954 shall be considered as equally applicable to the present Convention, unless the Parties have otherwise agreed.

Article 25

Without prejudice to the provisions of articles 22 and 24, the present Convention shall not derogate from Conventions containing provisions on the matters governed by this Convention to which the contracting States are, or shall become, Parties.

Article 26

The present Convention shall be open for signature by the States represented at the Tenth Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 27

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of article 26.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 28

Any State not represented at the Tenth Session of the Hague Conference on Private International Law may accede to the present Convention after it has entered into force in accordance with the first paragraph of article 27. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for such a State in the absence of any objection from a State, which has ratified the Convention before such deposit, notified to the Ministry of Foreign Affairs of the Netherlands within a period of six months after the date on which the said Ministry has notified it of such accession.

In the absence of any such objection, the Convention shall enter into force for the acceding State on the first day of the month following the expiration of the last of the periods referred to in the preceding paragraph.

Article 29

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories mentioned in such an extention on the sixtieth day after the notification referred to in the preceding paragraph.

Article 30

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of article 27, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it.

The Convention shall remain in force for the other contracting States.

Article 31

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in article 26, and to

the States which have acceded in accordance with article 28, of the following--

(a) the signatures and ratifications referred to in article 26;

(b) the date on which the present Convention enters into force in accordance with the first paragraph of article 27;

(c) the accessions referred to in article 28 and the dates on which they take effect;

(d) the extensions referred to in article 29 and the dates on which they take effect;

(e) the designations, oppositions and declarations referred to in article 21;

(f) the denunciations referred to in the third paragraph of article 30.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed the present Convention.

DONE at The Hague, on the 15th day of November, 1965, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of The States represented at the Tenth Session of the Hague Conference on Private International Law.

[Signatures omitted. Annex containing Forms printed at pp.9, 10.]

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters. Done at The Hague November 15, 1965; entered into force for the United States February 10, 1969. 20 UST 361; TIAS 6638; 658 UNTS 163. States which are parties:

Antigua and Barbuda[1]	Italy[4a]
Barbados[1a]	Japan[5]
Belgium[2]	Latvia
Botswana[2a2]	Luxembourg[6a]

Canada[3]
China[3a]
Malawi[10]
Netherlands[10a]

[3a] The People's Republic of China deposited its instrument of accession with the Ministry of Foreign Affairs of the Kingdom of the Netherlands on May 6, 1991, in accordance with Article 28, paragraph 1, of the Convention.
The instrument of accession contains the following declarations:
"1. to designate accordance to Article 2 and Article 9 of the Convention the Ministry of Justice of the People's Republic of China as the Central Authority and the authority competent to receive documents transmitted by foreign States through consular channels.
The communication address is:

Bureau of International Judicial Assistance
Ministry of Justice of the People's Republic of China
No. 11, Xiaguangli
Niuwangmiao, Chaoyang district
BEIJING, 100016
People's Republic of China

2. to declare according to the second paragraph of Article 8 that the means of service stipulated in the first paragraph of that Article may be used within the territory of the People's Republic of China only when the document is to be served upon a national of the State in which the document originate.
3. to oppose the service of documents in the territory of the People's Republic of China by the methods provided by

Article 10 of the Convention.
4. to declare in accordance with the second paragraph of Article 15 of the Convention that if all the conditions provided in that paragraph are fulfilled the judge, notwithstanding the provisions of the first paragraph of that Article, may give judgment even if no certificate of service or delivery has been received
5. to declare in accordance with the third paragraph of Article 16 of the Convention that the application for relief from the effects of the expiration of the time for appeal shall not be entertained except that it is filed within one year following the date of the judgment."

(courtesy translation)

In accordance with the terms of Article 28, paragraph 1, of the Convention any State not represented at the Tenth Session of the hague Conference on private international law may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 27 (viz: 10 February 1969).

In accordance with Article 28, paragraph 2, the Convention shall enter into force for the People's Republic of China in the absence of any objection from a State which has ratified the Convention (at present: Belgium, Denmark, Egypt, Finland, France, the Federal Republic of Germany, Greece, Israel, Italy, Japan, Luxembourg, the Kingdom of the Netherlands, Norway, Portugal, Spain, Sweden, Turkey, the United Kingdom of Great Britain and Northern Ireland and the United States of America) before such deposit, notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands within a period of six months after the date on which the said Ministry has notified it of such accession. For practical reasons this six months' period in this case is running from 1 June 1991 till 1 December 1991.

Notification in conformity with Article 31 of the Convention

The People's Republic of China deposited its instrument of accession to the abovementioned Convention with the Ministry of Foreign Affairs of the Kingdom of the Netherlands on 6 May 1991 in accordance with Article 28, paragraph 1

The instrument of accession contains the following declarations:

Courtesy translation

1. to designate according to Article 2 and Article 9 of the Convention the Ministry of Justice of the People's Republic of China as the Central Authority and the authority competent to receive documents transmitted by foreign states through consular channels.
   The communication address is:
   Bureau of International Judicial Assistance.
   Ministry of Justice of the People's Republic of China
   N 11, Xiaguangli
   Niuwangmiao, Chaoyang District
   Beijing, 1000016
   The People's Republic of China
2. to declare according to the second paragraph of Article 8 that the means of service stipulated in the first paragraph of that Article may be used within the territory of the People's Republic of China only when the document is to be served upon a national of the State in which the documents originate.
3. to oppose the service of documents in the territory of the People's Republic of China by the methods provided by Article 10 of the Convention.
4. to declare in accordance with the second paragraph of Article 15 of the Convention that if all the conditions provided in that paragraph are fulfilled, the judge, notwithstanding the provisions of the first paragraph of that Article, may give judgment even if no certificate of service or delivery has been received.

5. to declare in accordance with the third paragraph of Article 16 of the Convention that the application for relief from the effects of the expiration of the time for appeal shall not be entertained except that it is filed within one year following the date of the judgement.

The States which ratified the Convention were notified of the accession by the Dutch Government on 17 May 1991. Since none of these States raised an objection to the accession within the period of six months specified in Article 28, paragraph 2, the said accession became perfect on 1 December 1991.

The provisions of the Convention will enter into force for the People's Republic of China on 1 January 1992 in accordance with Article 28, paragraph 3.